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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,487	07/13/2001	Keith Gunn	7560	6062

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EXAMINER

ROSENTHAL, DANIELLE S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 12/26/2001

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,487

Applicant(s)

GUNN, KEITH

Examiner

Danielle S. Rosenthal

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. The "side planter" in claim 1 must be shown in the drawings or the feature canceled from the claim. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "36" has been used to designate both a fountain head and a flower in Fig. 2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to because there is no lead line for reference character "16" in Fig.1. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claims 12, 14, 18, and 20 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous

claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 12 and 14 do not further limit claim 8 or 1. Claims 18 and 20 do not further limit claims 15, 8, or 1.

5. Claim 16 is objected to because of the following informalities: "that" should be changed to --than--. Appropriate correction is required.

6. It is noted that although claims 10-15 depend on claim 8, based on the specification and drawings, it appears that claims 10-15 are intended to be based on claim 9. Similarly although claims 17-21 depend on claim 15, it appears these claims are intended to be based on claim 16. However, for examination, the claims were treated as they are written.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 4, 15, and 21 are is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The "side planter" introduced in claim 4 has not been mentioned or disclosed in the specification or the drawings. Thus, it is unclear how this part fits into the overall invention.

The "wheel assembly" introduced in claim 15 is not shown in the drawing. Thus it is not clear where precisely the wheel assembly is positioned on the base.

The "pair of fountain heads" introduced in claim 21 has not been mentioned or disclosed in the specification or drawings. It is unclear where the pair would be located on the invention.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 6, 7, 10, 12, 14, 15, 18 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what the difference is between a "fountain head" in claim 6 and a "sprinkler head" in claim 7. Traditionally, fountains are known to sprinkle water into the surrounding reservoirs and thus a fountain head seems to be equivalent to a sprinkler head. Further distinction is necessary to clarify the two parts.

Claim 10 recites the limitation "the base". There is insufficient antecedent basis for this limitation in the claim.

Claim 12 does not further limit claim 8 or claim 1. Claim 8 discloses a water discharge device with a fountain head. Claim 12 also discloses a water discharge device with a fountain head. It is unclear whether claim 12 is introducing an additional

fountain head or whether the fountain head in claim 12 refers to the one mentioned in claim 8 and 1.

Claim 14 does not further limit claims 8 or 1. The wording of claim 14 is identical to the wording of claim 8 and thus claim 8 is not further limited by claim 14.

Claim 15 recites the limitation "the base". There is insufficient antecedent basis for this limitation in the claim.

Claim 18 does not further limit claims 15, 8, or claim 1. Claim 8 discloses a water discharge device with a fountain head. Claim 18 also discloses a water discharge device with a fountain head. It is unclear whether claim 18 is introducing an additional fountain head or whether the fountain head in claim 18 refers to the one mentioned in claim 8 and 1.

Claim 20 does not further limit claims 15, 8 or 1. The wording of claim 20 is similar to the wording of claim 8 and thus claim 8 is not further limited by claim 20.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

12. Claims 1-4, 6-8, 10, 12-14, 16, and 22 are rejected under 35 U.S.C. 102(d) as being barred by Japanese Pat. No. JP02000014581A to Konishi et al. While patent drawings are not drawn to scale, relationships clearly shown in drawings of a reference

patent cannot be disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F. 2d 1069, 173 USPQ 25 (1972).

Referring to claims 1 and 2, Konishi et al. disclose a fountain that consists of a planter for storing water, a pump, a water discharge device connected to the pump, a second planter on the exterior surface of the first planter, and a third planter on the exterior of the first planter and located a distance away from the second planter (see Fig. 1 and Fig. 4).

Referring to claim 3, the third planter could be considered the semi-circular reservoir for holding water in Konishi et al.'s patent. In this case, the planter is positioned at a different height than the second planter, which is the side rectangular planter (see Fig. 1). However, it is noted that the planters being located at different heights does not affect the utility of the patent and thus could also be considered an obvious alteration to an existing patent with two planters at the same height.

Referring to claim 4, although it is not clear what a "side planter" is and where it is located since it is not disclosed in the application specification or drawings, taking it to mean an additional planter located between two planters, Konishi et al. disclose in Fig. 1, two rectangular planters with a third planter or reservoir between the two planters, and in Figs. 7 & 8, there is a third rectangular planter between two similar planters.

Referring to claims 6 and 7, Konishi et al. disclose a fountain head. This fountain head appears to be a sprinkler head. As can be seen by the Figs., water is sprinkling from the discharge device via the head to the surrounding reservoir.

Referring to claims 8 and 14, Konishi et al. disclose a tubular post member which is connected to the water discharge device and to the pump for providing water from the pump to the fountain head (see Fig. 4 where the P enclosed in a circle is the pump and reference "5" is the tubular member and "4" is the fountain head).

Referring to claim 10, Konishi et al. disclose a fountain with at least three planters and a base. Although in the Figs., the base is shown with water, the base could be adapted for holding plants if desired (see Fig. 1).

Referring to claims 12 and 13 and the aforementioned discussion on claims 1 and 8, Konishi et al. disclose a fountain head (see Fig. 4). This head is discharging water in a sprinkler fashion and thus is considered a sprinkler head as well.

Referring to claim 16, Konishi et al. disclose a fountain with a first planter for holding water with an upper rim, a pump, a discharge device connected to the pump, and a second planter positioned along the upper rim wherein the planter is wider than the first planter and is capable of holding plants and receiving water from the discharger (see Fig. 8). In Fig. 8, the upper rim is "K" and the "Y" is the base capable of holding water or the like such as plants.

Referring to claim 22, Konishi et al. disclose a fountain with a first planter for storing water, a pump in the planter, a discharge device connected to the pump, and a second planter arranged a distance from the first planter with upper and lower portions and a side portion integrally formed with one another to provide the planter at different heights about the first planter (see Fig. 7). In Fig. 7, the sides of the rectangular planters, P, and the circular planter, Y, interact to form a continuous planting area

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around the fountain where the planting area is at different heights relative to the first planter.

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claim 9 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Pat. No. 5,966,868 to Cox. Cox discloses a fountain with a planter for holding water, a pump, a water discharge device connected to the pump, and a base which contains a planter wherein the base is wider than the first planter and is capable of receiving the water from the discharger.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat No. JP02000014581A to Konishi et al. While patent drawings are not drawn to scale, relationships clearly shown in drawings of a reference patent cannot be

disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F.2d 1069, 173 USPQ 25 (1972).

17. Referring to claims 5 and 11, Konishi et al. disclose a fountain with three planters and a pump connected to a discharge device. Referring to the aforementioned discussion on claims 1 and 8, Konishi et al. disclose the claimed invention except for having the pump positioned on the bottom of the first planter. Since there is no disclosed utility for positioning the pump on the bottom of the planter, it is obvious to one having ordinary skill in the art to modify the position of the pump in Konishi et al. so that the pump can be located anywhere inside the planter.

18. Claims 15, 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. No. JP02000014581A to Konishi et al. and further in view of U.S. Pat. No. 6,092,333 to Steffan. Referring to claim 15 and the aforementioned discussion on claims 1 and 8, Konishi et al. disclose the claimed invention except for the wheel assembly on the base. Steffan teaches that a wheel assembly is a common feature of a plant apparatus in order to allow movement across the ground (see claim 3). Since a wheel assembly is commonly used in the art to allow an object to move easily, it would have been obvious to one having ordinary skill in the art to modify the base in Konishi et al. to include a wheel assembly for the purpose of transporting the fountain structure.

Referring to claim 17 and the aforementioned discussion on claims 1, 8, and 15, Konishi et al. disclose the claimed invention except for a pump positioned on the bottom of the planter. Since there is no disclosed utility for positioning the pump on the bottom

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of the planter, it is obvious to one having ordinary skill in the art to modify the position of the pump in Konishi et al. so that the pump can be located anywhere inside the planter.

Referring to claims 18 and 19 and the aforementioned discussion on claims 1, 8, and 15, Konishi et al. disclose a fountain head located on the top of the water discharger. This fountain head acts as a sprinkler head since the water is being discharged from the head and sprinkles the surrounding areas with water (see Fig. 1 of Konishi et al.)

Referring to claim 20 and the aforementioned discussion on claims 1, 8, and 15, Konishi et al. disclose a post member with one end connected to a pump and fountain head (see Fig. 4 of Konishi et al.)

Referring to claim 21 and the aforementioned discussion on claims 1, 8, and 15, Konishi et al. disclose a water discharge device with a post member connected to the pump and connected to a fountain head. Since there is no disclosed utility for using two fountain heads instead of one, it would have been obvious to one having ordinary skill in the art to use more than one fountain head in the fountain of Konishi et al. without altering the function of the fountain.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 147,849 to Leslie discloses a fountain with a plurality of flower pots located along the periphery of the fountain.

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Japanese Pat. No. 11266723A to Showa Seiki KK discloses a fountain with a flower pot on the bottom of the fountain positioned such that the flower pot receives water from the fountain. The fountain includes a pump and a water discharge device.

U.S. Pat. No. 5,440,836 to Lee discloses a watering device for a plant system where a pump and a discharge device is used to dispense water to a plurality of plant pots.

U.S. Pat. No. 327,673 to Gaillard discloses a fountain with a pump and discharge device for dispensing water to a surrounding planter.

U.S. Pat. No. 4,351,270 to Sabin discloses a terrarium/aquarium with a pump and a discharge device that dispenses water to a plurality of planters.

U.S. Pat. No. 5,794,318 to Parker et al. disclose a fountain with a planter above the fountain.

U.S. Pat. No. 183,163 to Hegarty discloses a fountain with two planters attached to the fountain such that the planters receive water from the fountain discharger.

U.S. Pat. No. 307,936 to Fry discloses a flower stand with three flower planters and a fountain at the top for discharging water to the planters.

U.S. Pat. No. 6,216,286 B1 to Zankow discloses a combined fountain and planter.

U.S. Pat. No. 4,349,293 to Rosenberger discloses a fountain attached to a plurality of blocks which can be used as planters.

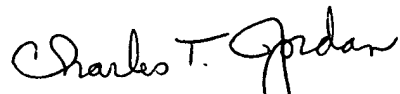
20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle S. Rosenthal whose telephone number is (703) 305-2765. The examiner can normally be reached on M-Th & every other F, 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached on (703) 308-2484. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

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305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



CHARLES T. JORDAN
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dsr
12/19/01